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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING



THOMAS D. WATKINS, JR.
SUPERINTENDENT OF
PUBLIC INSTRUCTION

October 13, 2004

MEMORANDUM

TO: Local and Intermediate School District Superintendents, Local and Intermediate School District Directors of Special Education, Chief Executive Officers of Public School Academies, Special Education Advisory Committee, Intermediate School District Parent Advisory Committee Chairs, State Parent Advisory Committee, Early-On Coordinators, State Interagency Coordinating Council, Continuous Improvement Monitoring Steering Committee, State and Local Hearing Officers, Education Alliance, Organizations and Associations Interested in Special Education and Early-On

FROM: Jacquelyn J. Thompson, Ph.D. Director
Office of Special Education and Early Intervention Services

Roberta E. Stanley, Director
Office of Administrative Law

SUBJECT: Time Line Compliance in Special Education Due Process Hearings

A part of the Office of Special Education Programs (OSEP) findings following its November 2003 verification visit to Michigan expressed dissatisfaction with time line compliance within our due process hearing system. A specific concern identified by OSEP was that up to 33% of pending cases had been in process for more than 45 days and had no time line extension documented and on file on the date OSEP reviewed the hearings database.

The OSEP directed creation of a plan with the goal of correcting the problem no later than March 15, 2005. The preliminary steps, including soliciting hearing officer input and drafting the plan, have been completed. The hearing officers have received notice of the plan. They have also been afforded a brief period of time to bring their existing cases into compliance.

OSE/EIS 04-22

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This memorandum serves to notify the stakeholders of the operation of the sanctions elements of the plan. The sanctions reflect the Michigan Department of Education's authority under the "Procedures for Appointment of Local Special Education Due Process Hearing Officers" to remove a hearing officer from the list of trained hearing officers for failure to complete a hearing within 45 days or to timely file documentation to grant an extension to a specific date.

The gist of the requirement is that each hearing officer must, in every case pending before him or her, either render a written decision within 45 days or maintain and file with the Office of Administrative Law documentation of a grant of a requested time extension to a specific date *and* render a written decision by the extended date. This is the minimum standard embodied in the Federal Regulations.

Beginning with the date of this memorandum, if the Office of Administrative Law finds that a hearing officer has failed to comply with this requirement, he or she will be afforded a five day period to show that the determination is erroneous. If this showing is not made or if the hearing officer does not respond, sanctions will be imposed as follows:

First instance – 30 day removal (from the list of trained hearing officers)

Second instance – 90 day removal

Third instance – permanent removal

These removals will not impair a sanctioned hearing officer's ability to proceed with cases already pending before him or her. Notice of the names of any hearing officers on removal status and the duration of their removal will be enclosed with the acknowledgement letter the Office of Administrative Law sends to the parties in all cases filed during the period of removal.

If a hearing officer is permanently removed, he or she will not be permitted to attend any subsequent hearing officer training sponsored by the Department and his or her name will be deleted from the list of trained hearing officers when the list is next published. Further, this notice will inform the parties that the Office of Administrative Law will NOT appoint any hearing officer while he or she is on removal status.

Use of the acknowledgment letter to communicate removals will assure that those most interested in the information will receive it. It heightens, however, the Office of Administrative Law's need for districts to supply complete and accurate contact information for all the involved parties at the time notice of the hearing request is sent to the Office of Administrative Law. It is our expectation that all stakeholders would recognize the basic procedural fairness involved in assuring that all parties to the dispute receive these notices on an equal and timely basis and therefore, promptly supply the needed contact information to the Office of Administrative Law.

If you have any questions about this information, please contact Lauren Harkness by telephone at (517) 373-8369, by facsimile at (517) 373-9238 or by e-mail at harknessl@michigan.gov.